

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company

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Docket No. 14-0316

**Petition to Make Housekeeping
Revisions and a Compliance Change
to filed Rate Formula.**

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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Table of Contents

I.	INTRODUCTION	1
II.	ARGUMENT	2
III.	CONCLUSION	9

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Commonwealth Edison Company	:	
	:	
	:	
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Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to the direction of the Administrative Law Judges (“ALJs”) and Section 200.800 of the Illinois Administrative Code (83 Ill. Adm. Code 200.800), respectfully submits its reply brief in the above-captioned matter.

I. INTRODUCTION

On April 16, 2014, ComEd filed a Petition (“Petition”) under Sections 16-108.5(c) and 9-201 of the Public Utilities Act (“Act”) seeking approval of a housekeeping revision and a compliance change to its delivery services rate formula, initiating Docket No. 14-0316. In the Petition, ComEd states that it provides delivery services under performance based formula rates established pursuant to the EIMA and that the Commission approved ComEd’s rate formula on May 29, 2012, in Docket No. 11-0721. ComEd further states in the Petition that Section 16-108.5 of the Act provides that “[s]ubsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act.” Petition at ¶3, *quoting* 220 ILCS 5/16-108.5(c).

The Commission entered an Interim Order on August 19, 2014 setting forth the Scope of Phase 2 of this Docket to address:

- (A) The definition of “formula rate structure and protocols” as it is used in Section 16-108.5 as it applies to ComEd;
- (B) Determine whether changes to the formula rate schedules, appendices, and workpapers that support Schedules FR A-1 and FR A-1 REC in ComEd’s formula rate tariff require Commission approval through a Section 9-201 filing; and
- (C) If the determination in (B) above is that the Commission must approve changes to all formula rate schedules, appendices and workpapers through a Section 9-201 proceeding, determine the necessary changes to be made to any of those documents to appropriately reflect the change in ComEd’s depreciation rates between the reconciliation year and the filing year.

(Docket No. 14-0316, Interim Order, August 19, 2014, p. 5.)

Staff and ComEd filed Direct Testimony in Phase 2 of this docket on September 11, 2014. Rebuttal Testimony was filed on September 24, 2014. An evidentiary hearing was conducted on September 29, 2014. On October 8, 2014, Staff, the AG, CUB, and ComEd filed their respective Initial Briefs (“IB”). Staff now files its Reply Brief. Where Staff does not specifically address an issue, Staff stands on its positions taken in testimony and in Staff’s IB.

II. ARGUMENT

A. The Commission should confirm that formula rate “structure,” as it applies to ComEd, comprises only Schedules FR A-1 and FR A-1 REC.

ComEd doggedly argues that both EIMA and the Commission have previously defined the term formula rate “structure” in a manner that conforms to its preferred definition (Schedules FR A-1 and FR A-1 REC, all other schedules and appendices, but not workpapers). (ComEd IB at 1-2, 3, 6-7, 9, 12.) This persistence does not change the

meaning of EIMA nor the Commission's past Orders, and neither actually supports ComEd's position.

With regard to formula rate structure, Staff's position is based on the Commission's Order in Docket No. 11-0721, ComEd's first formula rate proceeding ("ComEd FR1") wherein the Commission approved only Schedules FR A-1 and FR A-1 REC as ComEd's formula rate tariff, Rate DSPP. (Staff Ex. 1.0, 4.) Staff maintains that in its Order, the Commission effectively defined the "formula rate structure" to be limited to those two tariff formula rate schedules. No other schedule, appendix, or workpaper was determined by the Commission to be part of ComEd's formula rate tariff. Staff's position is bolstered by Section 16-108.5(c) of the Act, which requires that the Commission shall by order approve the "performance-based formula rate" and states, in relevant part:

After the utility files its proposed performance-based formula rate structure and protocols and initial rates, the Commission shall initiate a docket to review the filing. *The Commission shall enter an order approving, or approving as modified, the performance-based formula rate*, including the initial rates, as just and reasonable within 270 days.

220 ILCS 5/16-108.5(c)(emphasis added).

Further, the supporting schedules and their related appendices are not part of the formula rate "structure" because the Commission has previously found that the supporting schedules were merely a guideline or template in its Order in Docket No. 12-0321, concerning ComEd's second formula rate proceeding. In that Order the Commission concluded:

It is not clear to the Commission what ComEd means by, "...the formula rate template should also be used in the Commission's final Order to ensure that the calculations are aligned." (ComEd Reply Brief at 42). *A template is merely a guideline*, not a fully realized creation. If ComEd means that Staff should consult the template as it prepares the final Order and its attached

schedules, that is reasonable. The Commission understands that ComEd will include the formula rate schedules FR A-1 and FR A-1REC (and others) as part of the workpapers for its compliance filing. It appears to the Commission that it is more appropriate for ComEd to fill out the formula rate template with actual values derived from the Order at that time, rather than ask Staff, who did not develop the very complex template, to do so as part of this Order. Having the fully populated formula rate included as part of the compliance filing rather than attached to this Order will decrease the likelihood of unintended errors. If ComEd desires further disclosure, the Company may include the formula rate schedules in its compliance filing rather than just in workpapers. The Commission notes that there will be a rulemaking in which ComEd and other interested parties are encouraged to address this and other relevant issues regarding future formula rate filings.

(Order, Docket No. 12-0321, December 19, 2013, p. 105 (emphasis added).)

The Commission's conclusion above indicates that the Commission does not consider a formula rate template/guideline (i.e., those other supporting schedules not specifically set forth in the approved formula rate tariffs) to be an "approved" document for the formula rate update cases. *Id.*

Furthermore, ComEd's failed simile, comparing the formula rate structure to architectural blueprints should be ignored. (ComEd IB at 13.) ComEd claims that under Staff's proposal, the blueprints would be "the cover page alone, which shows what the finished home will look like upon completion." *Id.* By using this comparison, ComEd implies that any minor change in the design of a home set forth in the blue print should be subject to the scrutiny that parallels a Section 9-201 litigated proceeding that requires all interested parties, Commission Staff analysts and attorneys, administrative law judges, and Commissioners to evaluate and consider each minor change. When in reality, the many minor changes in a blueprint that occur throughout the construction of a home are evaluated and approved as the home is being constructed. This is consistent with Staff's position in this case. Under Staff's proposal, each change to the schedules supporting

Schedules FR A-1 and FR A-1 REC, appendices, and workpapers would be analyzed and considered in the conduct of each annual formula rate proceeding and any changes that were unacceptable to Staff or any party would be litigated in that proceeding.

The Commission has indicated ComEd's formula rate template consists of the two tariff pages Schedules FR A-1 and FR A-1 REC, which are supported by 11 schedules, 11 appendices, and 26 workpapers that total an excess of 100 pages that are not a part of the formula rate tariff. *Id.* Thus, the Commission should find that only changes to Schedules FR A-1 and FR A-1 REC require Commission approval through a Section 9-201 filing because those are the only schedules included in the Company's formula rate tariffs, which set forth the Commission-approved formula rate structure. (Order, Docket No. 12-0321, December 19, 2013, p. 105 (emphasis added).)

B. The Order in Docket No. 13-0318 Does Not Support ComEd's Position

ComEd argues that the Commission noted the possibility that the compliance change would need to be made in a separate Article IX filing in Docket No. 13-0318, but fails to provide the appropriate context of that Commission statement in this proceeding. (ComEd IB at 4.) Nevertheless, in Docket No. 13-0318, the Commission merely deferred certain issues to be decided in a different previously-initiated docket, and as such, that remark cannot support ComEd's position. (ICC Docket No. 13-0318, Final Order at 63.) To be clear, the Commission has done nothing that would support ComEd's assertion in this proceeding that the Docket No. 13-0318 "Order indicates that the Commission recognized that the formula is not simply defined as Sch[edule] FR A-1 and Sch[edule] FR A-1 Rec." (ComEd IB at 9; ICC Docket No. 13-0318, Final Order at 63.)

More specifically, the three issues to which the language quoted from the Docket No. 13-0318 Order pertained (i.e., deferred income taxes on the reconciliation balance, WACC gross-up, and rate for the ROE collar calculation) were moved by the Commission out of the formula rate case (Docket No. 13-0318) and into Docket No. 13-0553, an investigation in response to a verified complaint filed by the Attorney General (“AG”). That procedural move by the Commission in response to a Staff Report and an AG complaint cannot be reasonably construed to be a Commission conclusion on the substantive issue that is now the subject of this current proceeding. While the Commission need not make a finding on each issue or evidentiary fact in the record, the Commission is required to make findings only as to those facts which are essential to its determination. Citizens Utilities Co. v. Illinois Commerce Comm’n, 49 Ill. 2d 458, 463 (1971). Since there was no finding on these three issues in Docket No. 13-0318 (ComEd’s third formula rate case) that purportedly support ComEd’s claim, ComEd cannot credibly claim that those issues were decided in that proceeding. Furthermore, as stated above, Docket No. 13-0553 was initiated not only in response to the AG’s complaint but also in response to a Staff Report requesting an investigation under Section 10-113(a) of the Act.¹

Moreover, the Commission Order in Docket No. 13-0318 supports Staff’s recommendation in this case: it concluded an additional cash working capital (“CWC”) calculation not provided for in the schedules and appendices originally filed by the Company was necessary, even if it meant changing the physical format of a few supporting schedules and appendices. The Commission did not base its decision there concerning the second CWC calculation on whether the existing format of supporting

¹ 220 ILCS 5/10-113(a).

schedules would accommodate the additional calculation. Rather, it based its decision on whether such an adjustment was just and reasonable. The Commission did not consider itself to be bound by the format of supporting schedules or appendices in making its determination to accept the CWC adjustment. The Commission's decision in the Interim Order in this case reaffirms its decision in Docket No. 13-0318 that is squarely at odds with ComEd's position both in Docket No. 13-0318 and in the instant proceeding:

Commission Analysis and Conclusion

After reviewing the parties' filings, the Commission finds that the proposed housekeeping revision and compliance change are reasonable, but do not require Commission approval given that the compliance change related to cash working capital was already effectively approved in the Order in Docket No. 13-0318 and was made by ComEd previously in compliance with such Order.

(Interim Order, Docket No. 14-0316, August 19, 2014, p. 4.)

C. The Commission Should Adopt the Depreciation Adjustment Recommended by Staff

ComEd argues Staff's adjustment for depreciation requires a change to Schedule FR A-1 for distribution expense related to transportation equipment (ComEd IB at 17-18), and therefore cannot be approved by the Commission short of the approval of the changes to multiple schedules including Schedule FR A-1. (Staff IB at 17.) Staff's proposed adjustment reflects ComEd's updated depreciation rates effective January 2014, and applying that rate to calculate depreciation expense, accumulated depreciation, and accumulated deferred income taxes ("ADIT") for the filing year does not *require* changes to Schedule FR A-1. (Staff IB at 15; see ICC Docket No. 14-0312, Staff Ex. 7.0, Schedule 7.11 FY Attachment A.) As Staff explained in its Initial Brief, the adjustment proposed in this case, which mirrors the similar adjustment in Ameren Docket

No. 13-0501, can readily be reflected through changes to workpapers that can flow through to Schedule FR A-1 without making any revisions to the format of Schedule FR A-1. (Staff IB at 18-19.)

ComEd also argues that the calculation of depreciation was litigated in Docket No. 11-0721 and “a methodology was agreed upon” such that “there is simply no need to change it now.” (ComEd IB at 5-6.) However, ComEd omits material facts from its arguments against Staff’s adjustment: the record in Docket No. 11-0721 included neither (1) updated depreciation rates, nor (2) a reconciliation of rates set in a formula rate proceeding. (Staff IB at 19.) Since Staff’s analysis in the current case does reflect the impact of these facts, it is reasonable for a different conclusion to be reached regarding the calculation of depreciation expense for the filing year than was reached in Docket No. 11-0721.

Finally, ComEd argues that since a reconciliation will occur in the future, the estimate that ComEd uses to calculate depreciation expense does not warrant any change. (ComEd IB at 17 – 18.) ComEd is wrong as it claims that the future reconciliation “neutralizes” the customer impact of Staff’s adjustment. In fact, Staff’s adjustment minimizes the future reconciliation balance (both positive and negative) and therefore minimizes any interest that would impact customer rates subsequent to the reconciliation. (Staff IB at 19 – 22.) Staff’s adjustment, which more reasonably projects the depreciation expense for the filing year, should be approved by the Commission.

III. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations as described in its Initial Brief and herein.

Respectfully submitted,

/s/ _____
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